



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APR 25 2012

Uniform Issue List: 408.03-00

T:EP:RA:TI

Legend:

| | |
|-------------------------|---|
| Taxpayer A | = |
| IRA B | = |
| Financial Institution C | = |
| Account D | = |
| Financial Institution E | = |
| Amount 1 | = |
| Account F | = |

Dear :

This letter is in response to a request for a letter ruling dated July 18, 2011, as supplemented by additional correspondence dated September 13, and December 19, 2011, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age , represents that he withdrew the entire balance of IRA B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his belief that an employee of Financial Institution C told him he had more than 60 days to complete a rollover.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code, with Financial Institution C. On January 5, 2011, Taxpayer A contacted Financial Institution C to request a distribution of his account balance in IRA B. Taxpayer A interpreted a statement made by an employee of Financial Institution C to mean that he had more than 60 days from the date he receives the distribution of Amount 1 from IRA B to redeposit the funds in another IRA and, thereby, exclude this amount from his gross income. He received a check totaling Amount 1 on January 13, 2011. Taxpayer A intended to invest these funds in another IRA which provided a higher rate of return. On this same day, Taxpayer A deposited Amount 1 into non-IRA Account D, a joint checking account, with Financial Institution E. Amount 1 was to remain in this checking account until Taxpayer A was able to identify a more suitable IRA sponsor.

On April 6, 2011, which was more than 60 days after Taxpayer A withdrew Amount 1 from IRA B, he met with his tax preparer to complete his and his spouse's 2010 federal income tax return. He was informed by the tax preparer that he only had 60 days to complete the rollover of Amount 1. Subsequently, Taxpayer A realized he had misunderstood the communication he had with the employee of Financial Institution C regarding the rollover period for the distribution of Amount 1. At the advice of his tax preparer, Taxpayer A transferred Amount 1 on May 10, 2011, from Account D to a separate, non-interest bearing account (Account F) also maintained with Financial Institution E. Other than the transfer of Amount 1 from Account D to Account F, Taxpayer A asserts that Amount 1 has not been used for any other purpose.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or

distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted in this case indicates that Taxpayer A withdrew Amount 1 from IRA B and deposited it into a joint checking account. Taxpayer A's stated intent was to deposit it into another IRA which provided a higher rate of return. Taxpayer A has stated that he misunderstood a communication he had with an employee of Financial Institution C regarding the number of days to complete the rollover of Amount 1.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual intended to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of an event or occurrence beyond the reasonable control of the individual subject to such requirement. Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over Amount 1 to an IRA. Taxpayer A has represented that an employee of Financial Institution C gave him incorrect

information. However, Financial Institution C has declined to provide in writing that one of its employees provided erroneous information and Taxpayer A has not presented any other evidence of such communication. Taxpayer A was capable of making himself aware of the rules and time frame for completing a rollover of Amount 1. The information presented indicates that the inability of Taxpayer A to roll over Amount 1 into an IRA within the 60-day period was, at all times, within the reasonable control of Taxpayer A.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Therefore, Amount 1 will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, and, thus, will be includible in gross income for the 2011 taxable year.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (I.D. #),
at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: